



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0175; FRL-9930-23-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Pennsylvania; Determination of Attainment of the 2006 24-Hour Fine Particulate Standard
for the Liberty-Clairton Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a determination of attainment regarding the Liberty-Clairton, Pennsylvania 2006 24-hour fine particulate matter (PM_{2.5}) nonattainment area (hereafter “Liberty-Clairton Area” or “the Area”). EPA is determining that the Liberty-Clairton Area has attained the 2006 24-hour PM_{2.5} National Ambient Air Quality Standard (NAAQS), based upon quality-assured, quality-controlled and certified ambient air monitoring data for the calendar years 2012-2014. EPA’s final “clean data determination” will suspend the requirements to submit for the Liberty-Clairton Area an attainment demonstration, reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures related to attainment of the 2006 24-hour PM_{2.5} NAAQS, for so long as the Area continues to attain the 2006 24-hour PM_{2.5} NAAQS. This final determination will not constitute a redesignation to attainment. This final action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the**

Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2015-0175. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 2009, EPA published designations for the 2006 24-hour PM_{2.5} NAAQS (74 FR 58688), which became effective on December 14, 2009. In that action, EPA designated the Liberty-Clairton Area as nonattainment for the 2006 24-hour PM_{2.5} NAAQS. The Liberty-Clairton Area is comprised of the following portion of Allegheny County: The boroughs of Lincoln, Glassport, Liberty, and Port Vue and the City of Clairton. *See* 40 CFR 81.339 (Pennsylvania). The Liberty-Clairton Area is surrounded by, but separate and distinct from, the Pittsburgh-Beaver Valley PM_{2.5} nonattainment area.

A nonattainment designation under the CAA triggers additional planning requirements for states to show attainment of the NAAQS in the nonattainment areas by a statutory attainment date, as specified in the CAA. Since 2005, EPA had implemented the 1997 and 2006 PM_{2.5} NAAQS based on the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1). On January 4, 2013, in *Natural Resources Defense Council v. EPA (NRDC v. EPA)*, the D.C. Circuit determined that EPA should be implementing its PM_{2.5} pollution standard under additional CAA requirements than those EPA had been following in subpart 1 and remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (1997 PM_{2.5} Implementation Rule) (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})” final rule (2008 NSR PM_{2.5} Rule).¹ 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit found that the EPA erred in implementing the 1997 PM_{2.5} NAAQS solely pursuant to subpart 1, without consideration of the particulate matter specific provisions of subpart 4 of Part D of Title I of the CAA (subpart 4).

On April 25, 2014, EPA finalized a rule identifying the classification of all PM_{2.5} areas currently designated nonattainment for the 1997 and 2006 PM_{2.5} NAAQS as “Moderate,” consistent with subpart 4 of the CAA. *See* 79 FR 31566 (June 2, 2014). Consequently, the Liberty-Clairton Area was classified as Moderate for the 2006 24-hour PM_{2.5} NAAQS.

Under EPA’s longstanding Clean Data Policy interpretation, a determination that a nonattainment area has attained the NAAQS suspends the state’s obligation to submit an attainment demonstration, RFP, RACM, and contingency measures as required by the CAA for

¹ EPA’s 2008 NSR PM_{2.5} Rule relates to requirements for the NSR permitting program required by parts C and D of title I of the CAA. The details and provisions of the 2008 NSR PM_{2.5} Rule are not relevant to this proposed rulemaking.

so long as the area continues to attain the standard. Since the purpose of these provisions is to help reach attainment, a goal which has already been achieved, EPA interprets that these requirements should no longer be applicable. Although the D.C. Circuit remanded the 1997 PM_{2.5} Implementation Rule to EPA, the D.C. Circuit's decision in *NRDC v. EPA* related to EPA's use of subpart 1 for CAA Part D requirements instead of subpart 1 and subpart 4, and the decision did not cast doubt on EPA's interpretation of certain statutory provisions underlying the Clean Data Policy nor cast any doubt on EPA's Clean Data Policy interpretation in the 1997 PM_{2.5} Implementation Rule. *See NRDC v. EPA*, 706 F.3d 428.

On April 23, 2015 (78 FR 22666), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania proposing to determine that the Liberty-Clairton Area has attained the 2006 24-hour PM_{2.5} NAAQS. As part of the NPR, EPA addressed the effect of a final determination of attainment under the Clean Data Policy for the Liberty-Clairton Area, as a Moderate nonattainment area under subpart 4. The rationale for EPA's action is explained in the NPR and will not be restated here. No comments were received on the NPR.

II. Summary of EPA's Evaluation of the Liberty-Clairton PM_{2.5} Air Quality Data

This final "clean data determination" for the Liberty-Clairton Area is based on the quality-controlled, quality assured, certified PM_{2.5} air quality data for 2012-2014. There are two PM_{2.5} monitors in the Liberty-Clairton Area – one in Liberty Borough and one in the City of Clairton. The design values for the two monitors in the Liberty-Clairton Area for the 2012-2014 monitoring period were 35 µg/m³ or less. Therefore, EPA determines that the Liberty-Clairton Area has attained the 2006 24-hour PM_{2.5} NAAQS during the 2012-2014 monitoring period, in

accordance with 40 CFR part 50. Additional information on air quality data for the Liberty-Clairton Area can be found in the NPR and technical support document (TSD) prepared for the proposed action.

III. Final Actions

EPA determines that the Liberty-Clairton Area is currently attaining the 2006 24-hour PM_{2.5} NAAQS, based on the most recent three years of complete quality-assured, and certified data for 2012-2014 which meets the requirements of 40 CFR part 50, appendix N. In accordance with our Clean Data Policy, as a result of this final determination of attainment, EPA also determines that the obligation to submit the following attainment-related planning requirements for the Liberty-Clairton Area are not applicable for so long as the Area continues to monitor attainment for the 2006 24-hour PM_{2.5} NAAQS: Subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), and related attainment demonstration, RACM, RFP, and contingency measure provisions requirements of subpart 1, section 172. If at any time after the effective date of this final rulemaking notice, EPA determines that the Liberty-Clairton Area again violates the 2006 24-hour PM_{2.5} NAAQS, the basis for suspending these requirements would no longer exist. This final rulemaking action does not constitute a redesignation to attainment under CAA section 107(d)(3). In addition, this determination does not relieve Pennsylvania from the requirement to submit for the Liberty-Clairton Area an emissions inventory as required by CAA section 172(c)(3) or to have a nonattainment area permitting program pursuant to CAA sections 172(c)(5) and 173.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, determining that the Liberty-Clairton Area has attained the 2006 24-hour PM_{2.5} NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: June 25, 2015

Shawn M. Garvin,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

2. Section 52.2059 is amended by adding paragraph (q) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(q) Determination of attainment. EPA has determined, as of **[Insert date of publication in the Federal Register]**, based on quality-assured ambient air quality data for 2012 to 2014, that the Liberty-Clairton, PA nonattainment area has attained the 2006 24-hour fine particle (PM_{2.5}) national ambient air quality standards (NAAQS). This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour PM_{2.5} NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2006 24-hour PM_{2.5} NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

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